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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 ADRIAN SCHOOLCRAFT,

4 Plaintiff,

5 v.

10 CV 6005 (RWS)

6 THE CITY OF NEW YORK, et als,

7 Defendants.

8 -----x

New York, N.Y.  
January 15, 2014  
12:06 p.m.

10 Before:

11 HON. ROBERT W. SWEET,

12 District Judge

13 APPEARANCES

14 NATHANIAL B. SMITH

15 Attorney for Plaintiff

16 JOHN LENOIR

17 Attorney for Plaintiff

18 MICHAEL A. CARDOZO, Corporation Counsel  
for the City of New York

Attorneys for Defendant

19 SUZANNA PUBLICKER METTHAM

20 SCOPPETTA SEIFF KRETZ & ABERCROMBIE

Attorneys for Defendant Mauriello

21 WALTER A. KRETZ, JR.

22 MARTIN CLEARWATER & BELL LLP

Attorneys for Defendant Jamaica Hospital

23 GREGORY JOHN RADOMISLI

24 IVONE, DEVINE and JENSEN, LLP

Attorneys for Defendant Isakov

25 BRIAN E. LEE

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1 (In open court)

2 THE COURT: Schoolcraft.

3 MS. METTHAM: Good afternoon, your Honor. We're here  
4 on a motion by City defendants from December 18th. It sounds  
5 like some of the matters are more or less resolved. So I  
6 think we could start with the easiest and go to the more  
7 difficult.

8 THE COURT: Okay.

9 MS. METTHAM: The easiest is plaintiff provided some  
10 memoranda to nonparty NYPD witnesses, or so he claims. We  
11 searched NYPD for these memoranda; have not been able to find  
12 them. In our original document requests three years ago, we  
13 requested them of plaintiff, but haven't received them. In  
14 plaintiff's opposition, he stated he has no objection to  
15 providing them.

16 So we simply ask that he be ordered to provide those  
17 documents by next week.

18 THE COURT: Any problem?

19 MR. SMITH: I just don't want anyone to suggest --  
20 this is Nathaniel Smith for Schoolcraft. I just want to  
21 identify myself for the record.

22 I don't know that the plaintiff has these documents.  
23 These are two memos that --

24 THE COURT: Well, if he has them, he'll produce them.

25 MR. SMITH: Yes.

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1 THE COURT: Okay.

2 MS. METTHAM: Your Honor, the second one is a letter  
3 that plaintiff wrote firing previous counsel on this case. As  
4 the City defendants have --

5 THE COURT: I think I understand that. Well, you told  
6 me. Has that been resolved?

7 MS. METTHAM: It has not.

8 THE COURT: And this is the issue as to whether or not  
9 there was a waiver?

10 MS. METTHAM: Yes, your Honor.

11 THE COURT: Well, at this stage, we don't know that  
12 there's a waiver. Right? We know that-- you take the position  
13 that either the reporter was lying -- you should pardon the  
14 expression -- or something, but we don't know.

15 MS. METTHAM: Correct.

16 THE COURT: How are we going to resolve that? I mean,  
17 maybe the only thing you can do is subpoena the reporter and  
18 then we can have a litigation over sources. We'll have a grand  
19 old time.

20 MS. METTHAM: I hate to inform your Honor that we have  
21 done just that. So we will be having a grand old time, just  
22 not today.

23 THE COURT: Okay.

24 MS. METTHAM: My proposal, though, in my reply was  
25 that if plaintiff could provide an affidavit either stating

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1 that he never provided these documents --

2 THE COURT: Oh, sure, that would have solved it.

3 MS. METTHAM: Yes.

4 THE COURT: But obviously he's not going to do that or  
5 is he? Maybe?

6 MR. SMITH: Well, I mean, he's been asked --

7 THE COURT: That would obviate the problem. I guess  
8 the answer is unless you depose him or something, I don't know  
9 how you can compel him to give you an affidavit.

10 MR. SMITH: Well, part of the problem is that they've  
11 taken his deposition for 21 consecutive hours. They knew about  
12 this issue seven hours into the 21 hours. And now they've  
13 decided, well, we'd really like to get our hands on this juicy  
14 piece of totally irrelevant information about why the plaintiff  
15 fired his prior lawyer.

16 You know, I mean, yeah, could he provide an affidavit?  
17 Should he? No.

18 THE COURT: Okay. All right.

19 MS. METTHAM: Your Honor, I would actually cite to the  
20 case cited by Mr. Smith in his opposition, the Wellnx Life  
21 Sciences case which, in a similar matter, had an evidentiary  
22 hearing before the Court to resolve it. I simply ask that in  
23 going through the process of another deposition or another  
24 evidentiary hearing, that the Court order plaintiff to either  
25 produce the document or provide an affidavit that he did not

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1 produce those documents to Graham Raymond (ph) or his father.

2 THE COURT: What's my authority to do that? I mean, I  
3 will order him to be deposed again if you want. We can do  
4 that.

5 MS. METTHAM: I mean, I would ask, then, that your  
6 Honor order his deposition. And if plaintiff would like to  
7 avoid the deposition by providing an affidavit, we would be  
8 willing to do so.

9 THE COURT: Sure. Okay. Fine.

10 MS. METTHAM: Thank you, your Honor.

11 The third matter is with regard to messages that  
12 plaintiff's counsel received through a website set up--

13 THE COURT: Yes.

14 MS. METTHAM: So what happened is a few years ago  
15 plaintiff's prior counsel produced hundreds of pages of these  
16 documents without any confidentiality designation whatsoever,  
17 but with the names and contact information redacted. We have  
18 been for the last two years in a protracted attempt to avoid  
19 coming to the Court about this matter.

20 I have proposed to both prior and current counsel that  
21 either plaintiff provide the names and contact information of  
22 these individuals so that we can probe the veracity and  
23 credibility of these statements or that plaintiff be precluded  
24 from relying on these documents and statements in discovery and  
25 at trial.

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1 THE COURT: What do you think? How do we solve this?

2 MR. SMITH: My solution, your Honor, was that the  
3 names be provided to just the lawyers and the reason for  
4 that --

5 THE COURT: No, I understand. That's fine, but that  
6 doesn't quite solve the problem. It seems to me one of two  
7 things: You can provide all of the information eyes only,  
8 attorneys' eyes only, all of the information, or if you want to  
9 give them the name and keep the redaction as to the  
10 identification, I would permit that. But you will not be-- if  
11 you're going to use any of that information in any way -- and  
12 the trouble with that is how do we determine whether you do  
13 that or not? I mean, obviously if any of these people are  
14 going to be called, they've got to be deposed, et cetera, et  
15 cetera. I mean, if the City wants to.

16 So what would you like?

17 MR. SMITH: Well, my preference would be to provide  
18 all of the information on an attorneys' eyes only basis and --

19 THE COURT: That's fine.

20 MR. SMITH: And --

21 THE COURT: That's fine, but you also have to at some  
22 time indicate if you're going to call any of these people.

23 MR. SMITH: Yes. And that's where I think this rather  
24 substantial concern of safety has got to be addressed in a  
25 thoughtful and careful way. And right now I can think of one

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1 person who sent an e-mail who may actually have to testify as a  
2 witness in this case, because he actually also was tape  
3 recording one of the other --

4 THE COURT: Okay. I saw that.

5 MR. SMITH: Yes. So, I mean --

6 THE COURT: Clearly any evidence that you want to  
7 adduce based on those eyes only production, you have to now--  
8 when are you going to be able to-- where are we? Is there an  
9 end in sight? Probably not, but is there an end in sight for  
10 discovery?

11 MR. SMITH: Yes. Your Honor has given us until the  
12 middle of March approximately. We've done, as I indicated, the  
13 plaintiff for three days. The father of the plaintiff has been  
14 taken.

15 THE COURT: Well, look, at some time-- did you say the  
16 end of March?

17 MR. SMITH: The middle of March.

18 THE COURT: So obviously you've got to tell the City  
19 quite soon if you're going to call any of these, use any of  
20 these people.

21 MR. SMITH: Yes, I recognize that.

22 THE COURT: What would you say? Within a week?

23 MR. SMITH: Well, with respect to this one, we're  
24 moving pretty-- we're working hard now on discovery. We really  
25 are, Judge. I've taken, like, seven depositions.

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1 THE COURT: That was not a smile. That was an  
2 involuntary acid attack.

3 MR. SMITH: Well, I apologize if I had any role in  
4 that attack.

5 THE COURT: Oh, you certainly had.

6 MS. METTHAM: Your Honor, if I might just bring up one  
7 issue, which is that --

8 THE COURT: But let's be sure we're finished on this.  
9 So within a week you'll advise -- one, you'll give the City all  
10 of the information, eyes only for attorneys; and within a week  
11 if you're going to use any of these people, you will notify the  
12 City within a week or, say, ten days so that they will have an  
13 opportunity, if they choose to, to depose them.

14 MR. SMITH: Very well.

15 MS. METTHAM: Your Honor, my only concern with the  
16 attorneys' eyes only is that, if you'll recall, when City  
17 defendants had marked similar documents attorneys' eyes only,  
18 plaintiff argued to the Court that because those complaints  
19 included allegations against him, he should be able to see the  
20 documents to defend himself. And so your Honor removed the  
21 attorneys' eyes only confidentiality and made them  
22 confidential.

23 And my concern is that these documents similarly  
24 contain allegations against the City and Detective Mauriello.

25 THE COURT: Well, I think what's going to happen is

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1 when he designates these people, the basis for the eyes only  
2 is, on the one hand, work product, arguable; on the other is  
3 the blue wall problem. If he's going to elect to use any of  
4 these folks, the blue wall problem is out of it. I mean, that  
5 doesn't exist anymore.

6 MS. METTHAM: So I would suggest, your Honor, if it  
7 would be possible, that documents --

8 THE COURT: Excuse me. So it seems to me the logical  
9 conclusion is the attorneys' eyes only is lifted as to those  
10 that he's going to use.

11 MS. METTHAM: Yes, your Honor.

12 THE COURT: Okay.

13 MR. SMITH: Well, if you don't mind, your Honor, I'd  
14 like to just get a little bit of delay into when ultimately it  
15 has to be lifted. But it doesn't have to be lifted in a week.

16 THE COURT: No, except they're going to have to--  
17 they're going to have to get these people in.

18 MR. SMITH: The lawyers have to get this person in.  
19 We don't have to have, you know, public knowledge of who these  
20 people are.

21 THE COURT: That's fine. Okay, at that point. But at  
22 some point that's gone.

23 MR. SMITH: Yes. Certainly when the person is listed  
24 in a pretrial order, stands up and takes an oath and starts  
25 testifying, for sure.

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1 THE COURT: Oh, yes, but before then.

2 MR. SMITH: Well before then. I understand that.

3 THE COURT: Yes.

4 MR. SMITH: But we're not there yet.

5 THE COURT: Well, let's just say as to anybody that is  
6 going to be used, a month before the designation is over.

7 MS. METTHAM: Could you just clarify that?

8 THE COURT: I mean a month before-- I'm saying  
9 mid-February.

10 MS. METTHAM: So to be clear, your Honor, you've  
11 stated that plaintiff shall provide the names and contact  
12 information to City defendants within -- was it a week?

13 THE COURT: Right.

14 MS. METTHAM: And then anyone that plaintiff wishes to  
15 use as a witness in this case, he must identify them as a  
16 witness within that same week. And then a month from now, say  
17 February 14th--

18 THE COURT: As to those that are designated.

19 MS. METTHAM: -- as to those that are designated, the  
20 attorneys' eyes only designation.

21 THE COURT: Right. Okay. Yes. Anything else?  
22 Good-bye.

23 MS. METTHAM: Thank you, your Honor.

24 MR. KRETZ: Walter Kretz for Defendant Mauriello.

25 I would just like the Court to be aware there are 13

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1 named defendants that have yet to be deposed. There are  
2 anywhere, it seems to me, from half a dozen to a dozen  
3 nonparties who have yet to be deposed.

4 THE COURT: So you're saying mid-march, May.

5 MR. KRETZ: I just want the Court to be aware of that.

6 THE COURT: There's another little problem that's  
7 hanging out there, which is the PBA and this same --

8 MS. METTHAM: Your Honor, I think you're mistaking  
9 this for Stinson. The Stinson oral argument is scheduled for  
10 next week and the matter with the PBA is with regard to the  
11 Stinson case.

12 THE COURT: Okay.

13 MS. METTHAM: One thing off your plate for now.

14 THE COURT: Well, it's our weekly get-together. Thank  
15 you, all.

16 (Adjourned)

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